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| 10/098,574  | 03/18/2002  | Soazig Leprince      | 08048.0029-00       | 3216             |
| 22852   | 7590        | 10/30/2007           | EXAMINER            |                  |
| FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER<br>LLP<br>901 NEW YORK AVENUE, NW<br>WASHINGTON, DC 20001-4413 |             |                      | ARAQUE JR, GERARDO  |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/098,574             | LEPRINCE, SOAZIG    |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Gerardo Araque Jr.     | 3629                |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 21 September 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-27, 74-98, 179-198 and 239-258 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27, 74-98, 179-198 and 239-258 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Specification*

1. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. **Claims 74 – 98** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. In regards to **claim 74**, the applicant claims, "...providing, based on at least the first information, at least one type of color result prior to receiving information representative of a desired type of color result of a subject;..." However, the Examiner is uncertain of the newly added limitation since nothing has been done with this newly added step. That is to say, how does providing a color result prior to receiving the desired color result affect the claim? As best understood by the Examiner, this information does not provide any usefulness to the invention unless it is the desired type of color result of the subject is selected from the provided color result.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. **Claims 1 – 6, 8, 10 – 27, 74 – 81, 83 – 98, 179 – 186, 189 – 190, 192, 194 – 198, 239 – 246, 247, 249 – 250, 252, 254 – 258** are rejected under 35 U.S.C. 102(e) as being anticipated by **Marapane (US PGPub 2002/0010556 A1)**.

7. In regard to **claims 1 and 179**, **Marapane** discloses a method for providing hair tinting information, comprising:

receiving first information representative of at least one state of a subject's hair

**(Page 1 ¶ 7);**

receiving second information representative of at least one desired hair tinting result of the subject **(Page 1 ¶ 8, 10; Figure 9);**

providing information relating to a plurality of hair tinting products based on at least the first information and the second information **(Page 1 ¶ 6 – 10);**

receiving third information representative of the subject's selection of at least one hair tinting product in the plurality of hair tinting products **(Page 1 ¶ 6 – 10);** and

providing information relating to the at least one selected hair tinting product **(Page 1 ¶ 6 – 10; Page 2 ¶ 29).**

8. In regard to **claims 2 and 75**, **Marapane** discloses wherein the receiving first information includes receiving at least one of a subject's natural hair color and a subject's percentage of senescent hair **(Page 2 ¶ 30).**

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9. In regard to **claims 3, 76, 180 – 182, 184, 186, 240 – 242, 244, and 246,**

**Marapane** discloses wherein the first information is received from at least one of a portable measuring device, a touch-screen display, a mouse, and a keyboard (**Page 6 – 7 ¶ 134 – 139**).

10. In regard to **claims 4 and 77, Marapane** discloses further comprising: providing a plurality of natural hair color examples, wherein receiving first information comprises receiving a subject's natural hair color selection corresponding to one of the plurality of natural hair color examples which best corresponds to the subject's natural hair color (**Page 2 ¶ 31**); and storing the subject's natural hair color selection (**inherently included**).

11. In regards to **claim 5, Marapane** discloses further comprising: providing a plurality of examples of senescent hair percentages, wherein the receiving first information comprises receiving a subject's percentage of senescent hair selection corresponding to one of the plurality of examples of senescent hair percentages which best corresponds to the subject's percentage of senescent hair (**Page 3 ¶ 40**).

12. In regard to **claims 6 and 79, Marapane** discloses further comprising: receiving product information corresponding to the plurality of hair tinting products, wherein the received product information includes at least one of suitability of covering a percentage of senescent hair, natural application base, color effect obtained, color trademark, base shade, shade of highlights, lightening power, bleaching power, tone, product range, and product duration (**Page 1 ¶ 10; Figure 12**).

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13. In regard to **claims 7 and 80**, **Marapane** discloses wherein the product information is received from a local storage medium, including at least one of a hard disk and a solid state memory (**Page 6 ¶ 135 - 137**).

14. In regards to **claims 8, 81, 185, and 245**, **Marapane** discloses wherein the product information is received over a network (**Page 7 ¶ 137**).

15. In regard to **claims 10 and 83**, **Marapane** discloses wherein the product information is representative of products marketed under at least one brand name (**Figure 2**).

16. In regard to **claims 11 and 84**, **Marapane** discloses further comprising:  
selecting from the plurality of hair tinting products, based on the subject's percentage of senescent hair, a first subset of hair tinting products (**Figure 8**); and  
selecting from the first subset, based on the subject's natural hair color, a second subset of hair tinting products (**Figure 9**).

17. In regard to **claims 12 and 85**, **Marapane** discloses wherein the selecting from the first subset comprises:  
selecting at least one of a) hair tinting products having a natural application base corresponding to the subject's natural hair color (**inherently included when deciding on a product**), and b) hair tinting products which satisfy at least one condition specific to at least one type of color result (**inherently included since it would not be logical to provide a customer with a product that would result in a dissatisfactory result**).

18. In regard to **claims 13 and 86**, **Marapane** discloses wherein the receiving second information includes receiving a desired type of color result by the user, wherein

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the desired type of color result is selected from attainable types of color result (**Page 1 ¶ 6 – 10**).

19. In regard to **claims 14 and 87**, **Marapane** discloses wherein the attainable types of color result include at least one of lightness, colored shade, and cover senescent hair (**Page 3 – 4 ¶ 40 – 41**).

20. In regard to **claims 15 and 88**, **Marapane** discloses wherein the lightness includes at least one of streaks and whole head (**inherently included when deciding on a product see also Page 2 ¶ 32**).

21. In regard to **claims 16 and 89**, **Marapane** discloses wherein the colored shade includes at least one of intense result, natural result, and colored streaks result (**inherently included when deciding on a product see also Page 2 ¶ 32**).

22. In regards to **claim 18**, **Marapane** discloses further comprising:  
determining the product durations for at least some of the hair tinting products (**inherently included in that all hair dying products have various durations, such as temporary, semi-permanent, and permanent**); and

selecting hair tinting products having a product duration corresponding to the desired duration (**inherently included dependent on the customers desire**).

23. In regards to **claims 19 and 90**, **Marapane** discloses wherein the providing information relating to a plurality of hair tinting products further comprises providing ranges of hair tinting products (**Figure 10**).



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24. In regards to **claims 20 and 91**, **Marapane** discloses wherein the receiving third information representative of the subject's selection further comprises receiving information associated with at least one desired range (**Page 2 ¶ 30**).

25. In regard to **claims 21 and 92**, **Marapane** discloses further comprising:  
receiving a selection of at least one desired range of hair tinting products (**Page 1 ¶ 8, 10; Figure 9**); and

providing information relating to the hair tinting products having at least one range corresponding to the at least one desired range (**Page 1 ¶ 6 – 10**).

26. In regard to **claims 22 and 93**, **Marapane** discloses wherein at least one shade is associated with the at least one range (**Figure 12**).

27. In regard to **claims 23 and 94**, **Marapane** discloses further comprising: receiving information related to a subject's desired tone (**Page 1 ¶ 8, 10; Figure 9**); determining the hair tinting products within the at least one range having a tone corresponding to the desired tone (**Page 1 ¶ 6 – 10**); and indicating at least one shade which corresponds to the desired tone (**Figure 12**).

28. In regard to **claims 24 and 95**, **Marapane** discloses further comprising enabling the subject to purchase at least some of the hair tinting products (**inherently included wherein Marapane discloses that the system could be used in a salon which would indicate that a purchase would be made Page 2 ¶ 29**).

29. In regard to **claims 25 and 96**, **Marapane** discloses further comprising offering at least some of the hair tinting products for sale (**inherently included wherein Marapane**



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**discloses that the system could be used in a salon which would indicate that a purchase would be made Page 2 ¶ 29).**

30. In regard to **claims 26, 97, 189, and 249, Marapane** discloses wherein the method is performed at least substantially entirely at a point of sale for the hair tinting products (**inherently included wherein Marapane discloses that the system could be used in a salon which would indicate that a purchase would be made Page 2 ¶ 29).**

31. In regard to **claims 27 and 98, Marapane** discloses wherein the information relating to at least one hair tinting product comprises information relating to at least one of a plurality of products and a plurality of subsets of products (**Figures 8 – 10).**

32. In regard to **claims 74 and 239, Marapane** discloses a method for providing hair tinting information, comprising:

receiving first information representative of at least one state of a subject's hair  
**(Page 1 ¶ 7);**

providing, based on at least the first information, at least one type of color result prior to receiving information representative of a desired type of color result of a subject (**Page 1 ¶ 6 – 7; Fig. 1 wherein steps 160 Take readings, 170 Family color, and 180 Display achievable end colors are all performed before steps 190 Desired end color and 200 Product recommendation; moreover, Marapane further discloses that the user may go back and forth between these steps before deciding on a desired type of color result {see ¶ 32, for example});**

receiving second information representative of a desired type of color

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result of the subject (**Page 1 ¶ 8, 10; Figure 9**); and

providing, based on at least the first information and the second information, information relating to at least one hair tinting product (**Page 1 ¶ 6 – 10**).

33. In regards to **claim 78, Marapane** discloses further comprising:

providing a plurality of examples of senescent hair percentages (**Page 2 ¶ 30 – 31**); and

34. receiving a subject's percentage of senescent hair selection corresponding to one of the plurality of percentages of senescent hair examples which best corresponds to the subject's percentage of senescent hair (**Page 2 ¶ 30 – 31**).

35. In regard to **claims 183 and 243, Marapane** discloses wherein the measuring device is a portable instrument for measuring a subject's hair color (**Page 2 ¶ 31**).

36. In regards to **claims 190 and 250, Marapane** discloses wherein the apparatus operates substantially as a stand-alone unit without being connected to a computer server (**Page 2 ¶ 31**).

37. In regard to **claims 192 and 252, Marapane** discloses further comprising at least one swatch sampler (**Page 3 ¶ 40**).

38. In regard to **claims 194 and 254, Marapane** discloses further comprising at least one swatch sampler for estimating the quantity of senescent hair (**Page 3 ¶ 40**).

39. In regard to **claims 195 and 255, Marapane** discloses wherein the at least one swatch sampler further includes two sets of samplers enabling the quantity of senescent hair to be evaluated, one corresponding to a subject having fair hair and one corresponding to a subject having dark hair (**Page 3 ¶ 40**).

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40. In regard to **claims 196 and 256**, Marapane discloses wherein the at least one swatch sampler for estimating the quantity of senescent hair is comprised of at least five swatches, corresponding to 0%, less than 30%, 30% to 50%, 50% to 80%, and greater than 80% (**Page 3 ¶ 40**).

41. In regard to **claims 197 and 257**, Marapane discloses wherein the apparatus is adjacent to at least one set of shelves suitable for hair tinting products (**Page 2 ¶ 29; wherein the invention as disclosed by Marapane can be used in a salon, which would obviously have the apparatus adjacent to shelves suitable for hair tinting products**).

42. In regard to **claims 198 and 258**, Marapane discloses further comprising a lighting means for lighting a subject's hair (**Page 2 ¶ 29; obviously included wherein a salon would have lighting means**).

***Claim Rejections - 35 USC § 103***

43. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

44. **Claims 7, 9, 82, 187 – 188, 247 – 248, 191, 193, 251, and 253** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Marapane et al. (US PGPub 2002/0010556 A1)**.

45. In regard to **claims 9 and 82**, Marapane discloses that the method is carried out on a network, but fails to explicitly disclose the Internet. However, it is old and well

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known that the Internet is also a network. Moreover, it would have been obvious to one skilled in the art using the teachings of Marapane that the method can also be carried out anywhere (**Page 2 ¶ 29**), including the Internet, in order to avoid a large gathering of people waiting within a salon, for example.

46. In regards to **claim 17**, **Marapane** discloses receiving second information includes receiving the desired duration of hair tinting (**wherein it would be obvious when a customer selects a hair dying product it would include the type of dye, i.e. temporary, semi-permanent, and permanent**).

47. In regard to **claims 187 and 247**, **Marapane** discloses an image acquisition device for capturing an image of the subject for displaying on the display (**Page 1 ¶ 10 in which it would have been obvious to one skilled in the art that an image acquisition device would be required in order to carryout the method disclosed by Marapane**).

48. In regard to **claims 188 and 248**, **Marapane** discloses wherein said image acquisition device comprises a camera (**Page 1 ¶ 10 in which it would have been obvious to one skilled in the art that an image acquisition device would be required in order to carryout the method disclosed by Marapane, further still, it would have been also obvious that a camera would be an image acquisition device**).

49. In regards to **claims 191 and 251**, **Marapane** discloses that the method can be carried out in a salon wherein it would have been obvious to one skilled in the art that salons have mirrors.

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50. In regard to **claims 193 and 253**, Marapane discloses wherein the at least one swatch sampler includes a sampler of colored swatches comprising shade colors of black, brown, dark chestnut, chestnut, pale chestnut, dark blonde, blonde, light blonde, very light blonde, and lightest blonde (**Page 4 ¶ 41 moreover the various shades disclosed does not affect the function of the invention**).

### **Response to Arguments**

51. Applicant's arguments filed 9/21/07 have been fully considered but they are not persuasive.

### **Rejection under 35 USC § 102**

52. Applicant argues that Marapane fails to disclose "providing information relating to a plurality of hair tinting products" or "receiving third information representative of the subject's selection of at least one hair tinting product in the plurality of hair tinting products."

However, claim 1 recites "providing information relating to a plurality of hair tinting products **based on at least the first information and the second information**." The first information representative of at least one state of a subject's hair and the second information representative of at least one desired hair tinting result of the subject. As recited, Marapane discloses recommending hair color agents, **as well as products (see Page 2 ¶ 29)**, based on recipient input, which includes the steps of inputting at least one starting hair value of a recipient, inputting a family color selection, and outputting at least one working image depicting an achievable end hair color based upon the starting value and the family color selection. Moreover, Marapane also

discloses that the recipient chooses from a family of colors, which will later be used in the color prediction model (§ 31). One skilled in the art would know that when recommending a product to a customer it is important to provide as much information about the product in the event that the customer may have an allergic reaction to the chemicals found in the product. Further still, it is also old and well known that there are more than one method of dyeing a recipient's hair color to achieve an end result.

53. Regarding the arguments pertaining to the amended portion of claim 74, the Examiner has already responded above. Further still, the Examiner notes that selecting a Family color is still part of the first information provided by the user. The claim states, "receiving first information representative of at least one state of a subject's hair..." The Examiner asserts that choosing a Family color is further defining the current state of the subject's hair. That is to say, it is old and well known in the art that the types of dye that can be used are dependent on the last time the hair was tinted or the type of hair of the subject and as a result only selected dyes are allowed to be used.

**Rejection under 35 USC § 103**

54. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. KSR forecloses the argument that a specific teaching, suggestion, or motivation is required to support a finding of obviousness. See the recent Board decision *Ex parte Smith*, --USPQ2d--, slip op. at 20, (Db. Pat. App. & Interf. June 25,

2007)(citing *KSR*, 82 USPQ2d at 1396)(available at <http://www.uspto.gov/web/offices/dcom/bpai/prec/fd071925.pdf>).

55. All rejections made towards the dependent claims are maintained due to the lack of a reply by the applicant in regards to distinctly and specifically point out the supposed errors in the examiner's action in the prior Office Action (37 CFR 1.111). The Examiner asserts that the applicant only argues that the dependent claims should be allowable because the independent claims are unobvious and unpatentable over Marapane.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerardo Araque Jr. whose telephone number is (571)272-3747. The examiner can normally be reached on Monday - Friday 8:30AM - 4:00PM.

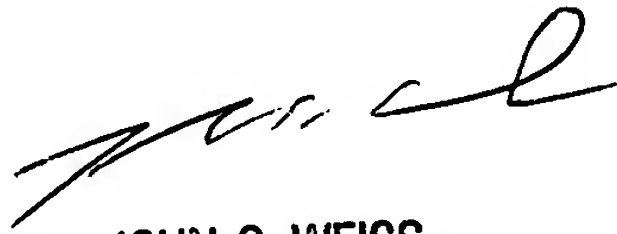
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GA  
10/16/07



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